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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

ENERGY INTELLIGENCE GROUP, INC.
and ENERGY INTELLIGENCE GROUP
(UK) LIMITED,

Plaintiffs,

v.

SINCLAIR OIL LLC

Defendant.

COMPLAINT

Case No. _____

Judge _____

JURY TRIAL DEMANDED

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiffs Energy Intelligence Group, Inc. (“EIG”) and Energy Intelligence Group (UK) Limited (“EIG UK”) (collectively, “Plaintiffs”), by and through their undersigned counsel, allege the following as and for their Complaint against Defendant, Sinclair Oil LLC (“Defendant”):

INTRODUCTION

1. Plaintiffs bring this action against Defendant under the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.* (the “Copyright Act”) for, among other things, willful infringement of Plaintiffs’ registered copyrights.

THE PARTIES

2. Plaintiff EIG is a Delaware corporation with its principal place of business located at 270

Madison Avenue, Suite 302, New York, New York 10016.

3. Plaintiff EIG UK is a United Kingdom limited company with its principal place of business located at Interpark House, 7 Down Street, London, W1J 7AJ United Kingdom.

4. Upon information and belief, Defendant Sinclair Oil LLC is a Delaware limited liability company with a place of business located at 550 East South Temple Street Salt Lake City,

UT 84102.

JURISDICTION AND VENUE

5. This Court has jurisdiction over causes of action alleging copyright infringement pursuant to Sections 501, *et seq.* of the Copyright Act. Additionally, the Court has federal question subject matter jurisdiction under 28 U.S.C. § 1331 because the federal courts are vested with exclusive jurisdiction in copyright cases. 28 U.S.C. § 1338(a).

6. This Court has personal jurisdiction over Defendant because, upon information and belief, Defendant is authorized to do business in the State of Utah, has a place of business located in this District, is present and doing business in this District, and the acts of copyright infringement alleged herein took place in this District.

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1400(a).

FACTUAL BACKGROUND

A. Plaintiffs' Publications

8. Plaintiffs, and their predecessors-in-interest, have been engaged in publishing newsletters and other publications for the global energy industry for over seventy (70) years. In particular, Plaintiffs and their predecessors-in-interest have published the daily newsletter *Oil Daily* (“OD”)

since 1951. A representative copy of the November 18, 2022 issue of OD is attached hereto as Exhibit A (the “November 18, 2022 Registered OD Work”).

9. The audience for Plaintiffs’ publications, including OD, consists of individuals with an interest and employment in industries relating to the oil, gas, and energy fields, including energy production, energy transportation, suppliers of goods and services to the energy sector, financial institutions, securities brokers and dealers, consultants, bankers, investors, stock market analysts, traders, commodity analysts, and others who follow or are impacted by the trends, analysis and pricing of the oil, gas and energy sector.

10. Plaintiffs’ focus is on authoring original, high-quality articles and analysis relating to the oil, gas and energy industries through OD and their other publications. Plaintiffs and their journalists have invested significant time and resources to create their publications, including OD.

11. Plaintiffs’ publications do not feature or have any advertisements or sponsors in order to ensure journalistic integrity and objective reporting. Plaintiffs are, therefore, dependent on paid subscriptions to sustain the viability of their publications.

12. Plaintiffs maintain an experienced and knowledgeable editorial staff of approximately sixty (60) reporters, editors, and analysts at seven (7) editorial bureaus located in New York, Washington, D.C., Houston, London, Moscow, Dubai, and Singapore.

13. The copyrighted, original content and analysis created by Plaintiffs included in its publications are valuable copyrighted works and publication assets of Plaintiffs. In addition to OD, Plaintiffs also publish other original publications, including, but not limited to:

EI New Energy;
EI New Energy Data Source;
Energy Compass;Energy Intelligence Briefing;
Energy Intelligence Finance

Gas Market Reconnaissance
International Oil Daily;
Jet Fuel Intelligence;
LNG Intelligence;
Natural Gas Week;
Natural Gas Week Data Source;
Nefte Compass;
Nefte Compass Data Source;
Nuclear Intelligence Weekly;
Oil Market Intelligence;
Oil Market Intelligence Data Source;
Petroleum Intelligence Weekly;
Petroleum Intelligence Weekly Data Source;
World Energy Opinion;
World Gas Intelligence; and
World Gas Intelligence Data Source.

14. Plaintiffs have developed an exemplary reputation for their high journalistic standards and the reliability of the content of all their publications, including OD.

15. In order for third parties to regularly benefit from Plaintiffs' analytical and creative content contained in OD and Plaintiffs' other publications, Plaintiffs offer various subscriptions to interested parties to access the valuable content contained in Plaintiffs' publications, including OD.

16. Interested parties have various subscription options depending on their respective needs. Subscribers typically obtain OD and Plaintiffs' other publications by email and/or from Plaintiffs' website, which permits password-protected access to current and/or archived issues, pursuant to subscription agreement for a specific number of copies or an enterprise-wide subscription. Plaintiffs provide the individual articles in Plaintiffs' publications separately from the publication.

17. Interested parties that have elected to not maintain a subscription or license agreement may purchase individual articles appearing in OD and Plaintiffs' other publications, as well as archived articles, by using Plaintiffs' pay-per-article service. The license fee per article, per

copy, is \$9.00 for articles appearing in OD. The total license fee for this pay-per-article service is multiplied by the number of copies of the requested article to calculate the total licensing fee.

18. Interested parties that do not maintain a subscription or license agreement may also purchase individual issues of Plaintiffs' publications including OD, as well as archived issues, from Plaintiffs using Plaintiffs' pay-per-issue service. The license fee per issue, per copy, is \$95.00 for OD. The total cost for this pay-per-issue service is determined by multiplying the number of copies of the requested issue by the \$95.00 per issue per copy cost to calculate the total cost.

B. The Oil Daily Copyright Notices

19. Plaintiffs have complied with Section 401 of the Copyright Act and the laws pertinent to providing notice of Plaintiffs' copyrights in, and to, OD and their other publications. Specifically, Plaintiffs provide copyright notices and warnings on their website, e-mails, articles and publications, including OD, so that third parties are aware of Plaintiffs' rights in their publications and works of original authorship (the "Copyright Notice and Warnings"). As a representative example, the Copyright Notice and Warnings contained in the e-mail transmitting the November 18, 2022 Registered OD work state:

Copyright © 2022 Energy Intelligence Group, Inc. All rights reserved.

Reproduction or distribution internally or externally in any manner (photostatically, electronically, or via facsimile), including by sharing printed copies, or forwarding or posting on local- and wide-area networks and intranets, or sharing user name and password, is strictly prohibited without appropriate license from Energy Intelligence. Contact customerservice@energyintel.com for more information.

(Exhibit B at 5).

20. As an additional representative example, the Copyright Notice and Warnings on the front cover of the November 18, 2022 Registered OD Work specifically state: "Copyright © 2022

Energy Intelligence Group. All rights reserved. Unauthorized access or electronic forwarding, even for internal use, is prohibited.” (Exhibit A at 1).

21. As a further representative example, Plaintiffs also use the following Copyright Notice and Warnings in the November 18, 2022 Registered OD Work:

Copyright © 2022 by Energy Intelligence Group, Inc. [. . .] All rights reserved. Access, distribution and reproduction are subject to the terms and conditions of the subscription agreement and/or license with Energy Intelligence. Access, distribution, reproduction or electronic forwarding not specifically defined and authorized in a valid subscription agreement or license with Energy Intelligence is willful copyright infringement. Additional copies of individual articles may be obtained using the pay-per-article feature offered at www.energyintel.com.

(Exhibit A at 13).

22. Subscribers who elect to obtain their copy of OD directly from Plaintiffs’ website receive a notification email when a new issue of OD is available, which also provides a copyright notice and warning that informs subscribers that copying and distribution of OD is prohibited.

Additionally, subscribers who elect to obtain their copy of OD directly from Plaintiffs’ website must agree to Plaintiffs’ terms and conditions, which prohibit copying and distribution of Plaintiffs’ publications without express written permission of Plaintiffs and provide additional notice that Plaintiffs’ publications are protected by copyright.

23. Based on these representative examples of the Copyright Notice and Warnings, Plaintiffs are in compliance with the copyright notice requirements set forth in the Copyright Act, 17 U.S.C. § 401.

24. Accordingly, Defendant knew or should have known that the November 18, 2022 Registered OD Work and all other issues of OD received by Defendant and the articles contained therein were and are protected by U.S. copyright laws.

25. The copyright notices appearing conspicuously on multiple materials received by Defendant, including the OD publications, demonstrate Defendant's actual notice of Plaintiffs' copyrights in the issues of OD received by Defendant and the articles contained therein, all of which are protected by U.S. copyright laws.

26. Defendant had constructive knowledge of Plaintiffs' copyrights in OD based on receiving the OD publications containing the copyright notices prominently displayed in each of the OD publications.

27. Having complied with the copyright notice requirements set forth in the Copyright Act, 17 U.S.C. § 401, Plaintiffs have provided Defendant with complete and proper notice of Plaintiffs' copyrights in OD.

C. Plaintiffs' OD Copyrights

28. Plaintiffs are the exclusive copyright owners in, and to, numerous original works of authorship including, without limitation, the issues of OD and the independently-available articles contained therein.

29. Plaintiffs are the owners of the following U.S. Copyright Registrations covering the following issues of OD (hereinafter collectively referred to as the "Registered OD Works"), attached hereto as Exhibit C:

- No. TX 6-052-767 for Edition 54 covering 22 collective works and the articles contained therein published in June 2004;
- No. TX 6-052-513 for Edition 54 covering 21 collective works and the articles contained therein published in July 2004;
- No. TX 6-052-765 for Edition 54 covering 22 collective works and the articles contained therein published in August 2004;
- No. TX 6-052-758 for Edition 54 covering 21 collective works and the articles contained therein published in September 2004;
- No. TX 6-052-761 for Edition 54 covering 21 collective works and the articles contained therein published in October 2004;
- No. TX 6-099-059 for Edition 54 covering 20 collective works and the articles contained therein published in November 2004;

- No. TX 6-099-058 for Edition 54 covering 21 collective works and the articles contained therein published in December 2004;
- No. TX 6-152-002 for Edition 55 covering 20 collective works and the articles contained therein published in January 2005;
- No. TX 6-185-812 for Edition 55 covering 19 collective works and the articles contained therein published in February 2005;
- No. TX 6-167-638 for Edition 55 covering 22 collective works and the articles contained therein published in March 2005;
- No. TX 6-176-605 for Edition 55 covering 21 collective works and the articles contained therein published in April 2005;
- No. TX 6-172-297 for Edition 55 covering 21 collective works and the articles contained therein published in May 2005;
- No. TX 6-206-684 for Edition 55 covering 22 collective works and the articles contained therein published in June 2005;
- No. TX 6-206-680 for Edition 55 covering 20 collective works and the articles contained therein published in July 2005;
- No. TX 6-226-396 for Edition 55 covering 23 collective works and the articles contained therein published in August 2005;
- No. TX 6-226-407 for Edition 55 covering 21 collective works and the articles contained therein published in September 2005;
- No. TX 6-257-042 for Edition 55 covering 21 collective works and the articles contained therein published in October 2005;
- No. TX 6-267-191 for Edition 55 covering 20 collective works and the articles contained therein published in November 2005;
- No. TX 6-340-912 for Edition 55 covering 21 collective works and the articles contained therein published in December 2005;
- No. TX 6-286-047 for Edition 56 covering 20 collective works and the articles contained therein published in January 2006;
- No. TX 6-340-550 for Edition 56 covering 19 collective works and the articles contained therein published in February 2006;
- No. TX 6-337-677 for Edition 56 covering 23 collective works and the articles contained therein published in March 2006;
- No. TX 6-782-058 for Edition 56 covering 19 collective works and the articles contained therein published in April 2006;
- No. TX 6-425-046 for Edition 56 covering 22 collective works and the articles contained therein published in May 2006;
- No. TX 6-425-037 for Edition 56 covering 22 collective works and the articles contained therein published in June 2006;
- No. TX 6-431-332 for Edition 56 covering 19 collective works and the articles contained therein published in July 2006;
- No. TX 6-431-344 for Edition 56 covering 23 collective works and the articles contained therein published in August 2006;
- No. TX 6-456-925 for Edition 56 covering 20 collective works and the articles contained therein published in September 2006;
- No. TX 6-508-701 for Edition 56 covering 22 collective works and the articles contained therein published in October 2006;

- No. TX 6-505-161 for Edition 56 covering 20 collective works and the articles contained therein published in November 2006;
- No. TX 6-508-675 for Edition 56 covering 20 collective works and the articles contained therein published in December 2006;
- No. TX 6-550-424 for Edition 57 covering 21 collective works and the articles contained therein published in January 2007;
- No. TX 6-550-616 for Edition 57 covering 19 collective works and the articles contained therein published in February 2007;
- No. TX 6-550-614 for Edition 57 covering 22 collective works and the articles contained therein published in March 2007;
- No. TX 6-587-006 for Edition 57 covering 20 collective works and the articles contained therein published in April 2007;
- No. TX 6-564-745 for Edition 57 covering 22 collective works and the articles contained therein published in May 2007;
- No. TX 6-626-689 for Edition 57 covering 21 collective works and the articles contained therein published in June 2007;
- No. TX 6-626-690 for Edition 57 covering 21 collective works and the articles contained therein published in July 2007;
- No. TX 6-626-278 for Edition 57 covering 23 collective works and the articles contained therein published in August 2007;
- No. TX 6-626-280 for Edition 57 covering 19 collective works and the articles contained therein published in September 2007;
- No. TX 6-648-210 for Edition 57 covering 23 collective works and the articles contained therein published in October 2007;
- No. TX 6-645-633 for Edition 57 covering 20 collective works and the articles contained therein published in November 2007;
- No. TX 6-645-632 for Edition 57 covering 20 collective works and the articles contained therein published in December 2007;
- No. TX 6-646-218 for Edition 58 covering 21 collective works and the articles contained therein published in January 2008;
- No. TX 6-648-381 for Edition 58 covering 20 collective works and the articles contained therein published in February 2008;
- No. TX 6-648-380 for Edition 58 covering 20 collective works and the articles contained therein published in March 2008;
- No. TX 6-647-038 for Edition 58 covering 22 collective works and the articles contained therein published in April 2008;
- No. TX 6-647-107 for Edition 58 covering 21 collective works and the articles contained therein published in May 2008;
- No. TX 6-648-007 for Edition 58 covering 21 collective works and the articles contained therein published in June 2008;
- No. TX 6-662-761 for Edition 58 covering 22 collective works and the articles contained therein published in July 2008;
- No. TX 6-665-575 for Edition 58 covering 21 collective works and the articles contained therein published in August 2008;
- No. TX 6-680-142 for Edition 58 covering 21 collective works and the articles contained therein published in September 2008;

- No. TX 6-662-749 for Edition 58 covering 23 collective works and the articles contained therein published in October 2008;
- No. TX 6-664-308 for Edition 58 covering 18 collective works and the articles contained therein published in November 2008;
- No. TX 6-664-309 for Edition 58 covering 22 collective works and the articles contained therein published in December 2008;
- No. TX 6-647-241 for Edition 59 covering 20 collective works and the articles contained therein published in January 2009;
- No. TX 6-631-529 for Edition 59 covering 19 collective works and the articles contained therein published in February 2009;
- No. TX 6-647-244 for Edition 59 covering 22 collective works and the articles contained therein published in March 2009;
- No. TX 6-665-630 for Edition 59 covering 21 collective works and the articles contained therein published in April 2009;
- No. TX 6-631-518 for Edition 59 covering 20 collective works and the articles contained therein published in May 2009;
- No. TX 6-631-525 for Edition 59 covering 22 collective works and the articles contained therein published in June 2009;
- No. TX 6-685-271 for Edition 59 covering 22 collective works and the articles contained therein published in July 2009;
- No. TX 6-684-118 for Edition 59 covering 21 collective works and the articles contained therein published in August 2009;
- No. TX 6-701-938 for Edition 59 covering 21 collective works and the articles contained therein published in September 2009;
- No. TX 6-701-939 for Edition 59 covering 22 collective works and the articles contained therein published in October 2009;
- No. TX 6-702-127 for Edition 59 covering 21 collective works and the articles contained therein published in November 2009;
- No. TX 6-702-124 for Edition 59 covering 22 collective works and the articles contained therein published in December 2009;
- No. TX 6-701-924 for Edition 60 covering 20 collective works and the articles contained therein published in January 2010;
- No. TX 6-701-927 for Edition 60 covering 20 collective works and the articles contained therein published in February 2010;
- No. TX 6-703-824 for Edition 60 covering 23 collective works and the articles contained therein published in March 2010;
- No. TX 6-703-826 for Edition 60 covering 21 collective works and the articles contained therein published in April 2010;
- No. TX 6-704-578 for Edition 60 covering 20 collective works and the articles contained therein published in May 2010;
- No. TX 6-704-734 for Edition 60 covering 22 collective works and the articles contained therein published in June 2010;
- No. TX 6-705-213 for Edition 60 covering 22 collective works and the articles contained therein published in July 2010;
- No. TX 6-770-133 for Edition 60 covering 22 collective works and the articles contained therein published in August 2010;

- No. TX 6-770-132 for Edition 60 covering 22 collective works and the articles contained therein published in September 2010;
- No. TX 6-772-066 for Edition 60 covering 21 collective works and the articles contained therein published in October 2010;
- No. TX 6-779-215 for Edition 60 covering 22 collective works and the articles contained therein published in November 2010;
- No. TX 6-778-772 for Edition 60 covering 21 collective works and the articles contained therein published in December 2010;
- No. TX 6-776-062 for Edition 61 covering 21 collective works and the articles contained therein published in January 2011;
- No. TX 6-776-069 for Edition 61 covering 20 collective works and the articles contained therein published in February 2011;
- No. TX 6-779-252 for Edition 61 covering 23 collective works and the articles contained therein published in March 2011;
- No. TX 6-779-251 for Edition 61 covering 20 collective works and the articles contained therein published in April 2011;
- No. TX 6-779-316 for Edition 61 covering 21 collective works and the articles contained therein published in May 2011;
- No. TX 6-776-025 for Edition 61 covering 22 collective works and the articles contained therein published in June 2011;
- No. TX 6-782-122 for Edition 61 covering 21 collective works and the articles contained therein published in July 2011;
- No. TX 6-774-709 for Edition 61 covering 23 collective works and the articles contained therein published in August 2011;
- No. TX 6-780-004 for Edition 61 covering 22 collective works and the articles contained therein published in September 2011;
- No. TX 6-780-005 for Edition 61 covering 21 collective works and the articles contained therein published in October 2011;
- No. TX 6-782-123 for Edition 61 covering 22 collective works and the articles contained therein published in November 2011;
- No. TX 6-782-124 for Edition 61 covering 12 collective works and the articles contained therein published in December 2011;
- No. TX 6-789-069 for Edition 61 covering 9 collective works and the articles contained therein published in December 2011;
- No. TX 6-774-708 for Edition 62 covering 21 collective works and the articles contained therein published in January 2012;
- No. TX 6-786-171 for Edition 62 covering 21 collective works and the articles contained therein published in February 2012;
- No. TX 6-787-504 for Edition 62 covering 22 collective works and the articles contained therein published in March 2012;
- No. TX 6-787-503 for Edition 62 covering 20 collective works and the articles contained therein published in April 2012;
- No. TX 6-790-051 for Edition 62 covering 23 collective works and the articles contained therein published in May 2012;
- No. TX 6-788-122 for Edition 62 covering 21 collective works and the articles contained therein published in June 2012;

- No. TX 6-789-191 for Edition 62 covering 22 collective works and the articles contained therein published in July 2012;
- No. TX 6-790-253 for Edition 62 covering 23 collective works and the articles contained therein published in August 2012;
- No. TX 6-790-252 for Edition 62 covering 20 collective works and the articles contained therein published in September 2012;
- No. TX 6-790-254 for Edition 62 covering 22 collective works and the articles contained therein published in October 2012;
- No. TX 6-790-255 for Edition 62 covering 22 collective works and the articles contained therein published in November 2012;
- No. TX 7-676-538 for Edition 62 covering 20 collective works and the articles contained therein published in December 2012;
- No. TX 7-676-528 for Edition 63 covering 22 collective works and the articles contained therein published in January 2013
- No. TX 7-744-517 for Edition 63 covering 20 collective works and the articles contained therein published in February 2013;
- No. TX 7-744-541 for Edition 63 covering 20 collective works and the articles contained therein published in March 2013;
- No. TX 7-726-260 for Edition 63 covering 22 collective works and the articles contained therein published in April 2013;
- No. TX 7-726-259 for Edition 63 covering 23 collective works and the articles contained therein published in May 2013;
- No. TX 7-726-232 for Edition 63 covering 20 collective works and the articles contained therein published in June 2013;
- No. TX 7-989-393 for Edition 63 covering 23 collective works and the articles contained therein published in July 2013;
- No. TX 7-946-126 for Edition 63 covering 22 collective works and the articles contained therein published in August 2013;
- No. TX 7-898-912 for Edition 63 covering 21 collective works and the articles contained therein published in September 2013;
- No. TX 7-991-979 for Edition 63 covering 23 collective works and the articles contained therein published in October 2013;
- No. TX 8-068-878 for Edition 63 covering 21 collective works and the articles contained therein published in November 2013;
- No. TX 8-058-300 for Edition 63 covering 21 collective works and the articles contained therein published in December 2013;
- No. TX 7-962-816 for Edition 64 covering 22 collective works and the articles contained therein published in January 2014;
- No. TX 7-990-336 for Edition 64 covering 20 collective works and the articles contained therein published in February 2014;
- No. TX 7-993-575 for Edition 64 covering 21 collective works and the articles contained therein published in March 2014;
- No. TX 7-934-103 for Edition 64 covering 21 collective works and the articles contained therein published in April 2014;
- No. TX 7-966-215 for Edition 64 covering 21 collective works and the articles contained therein published in May 2014;

- No. TX 7-982-542 for Edition 64 covering 21 collective works and the articles contained therein published in June 2014;
- No. TX 8-050-420 for Edition 64 covering 23 collective works and the articles contained therein published in July 2014;
- No. TX 8-086-895 for Edition 64 covering 21 collective works and the articles contained therein published in August 2014;
- No. TX 8-029-377 for Edition 64 covering 22 collective works and the articles contained therein published in September 2014
- No. TX 8-110-455 for Edition 64 covering 23 collective works and the articles contained therein published in October 2014;
- No. TX 8-060-210 for Edition 64 covering 20 collective works and the articles contained therein published in November 2014;
- No. TX 8-109-803 for Edition 64 covering 22 collective works and the articles contained therein published in December 2014;
- No. TX 8-051-089 for Edition 65 covering 21 collective works and the articles contained therein published in January 2015;
- No. TX 8-178-073 for Edition 65 covering 20 collective works and the articles contained therein published in February 2015;
- No. TX 8-178-063 for Edition 65 covering 22 collective works and the articles contained therein published in March 2015;
- No. TX 8-149-237 for Edition 65 covering 21 collective works and the articles contained therein published in April 2015;
- No. TX 8-180-407 for Edition 64 covering 20 collective works and the articles contained therein published in May 2015;
- No. TX 8-205-565 for Edition 65 covering 22 collective works and the articles contained therein published in June 2015;
- No. TX 8-205-582 for Edition 65 covering 23 collective works and the articles contained therein published in July 2015;
- No. TX 8-236-144 for Edition 65 covering 21 collective works and the articles contained therein published in August 2015;
- No. TX 8-235-733 for Edition 65 covering 22 collective works and the articles contained therein published in September 2015;
- No. TX 8-256-329 for Edition 65 covering 22 collective works and the articles contained therein published in October 2015;
- No. TX 8-479-565 for Edition 65 covering 21 collective works and the articles contained therein published in November 2015;
- No. TX 8-258-814 for Edition 65 covering 22 collective works and the articles contained therein published in December 2015;
- No. TX 8-262-868 for Edition 66 covering 20 collective works and the articles contained therein published in January 2016;
- No. TX 8-263-911 for Edition 66 covering 21 collective works and the articles contained therein published in February 2016;
- No. TX 8-274-102 for Edition 66 covering 22 collective works and the articles contained therein published in March 2016;
- No. TX 8-323-668 for Edition 66 covering 21 collective works and the articles contained therein published in April 2016;

- No. TX 8-412-812 for Edition 66 covering 21 collective works and the articles contained therein published in May 2016;
- No. TX 8-285-267 for Edition 66 covering 22 collective works and the articles contained therein published in June 2016;
- No. TX 8-330-442 for Edition 66 covering 21 collective works and the articles contained therein published in July 2016;
- No. TX 8-315-318 for Edition 66 covering 23 collective works and the articles contained therein published in August 2016;
- No. TX 8-334-804 for Edition 66 covering 22 collective works and the articles contained therein published in September 2016;
- No. TX 8-397-635 for Edition 66 covering 21 collective works and the articles contained therein published in October 2016;
- No. TX 8-397-583 for Edition 66 covering 23 collective works and the articles contained therein published in November 2016;
- No. TX 8-397-541 for Edition 66 covering 21 collective works and the articles contained therein published in December 2016;
- No. TX 8-360-266 for Edition 67 covering 21 collective works and the articles contained therein published in January 2017;
- No. TX 8-380-664 for Edition 67 covering 20 collective works and the articles contained therein published in February 2017;
- No. TX 8-440-678 for Edition 67 covering 23 collective works and the articles contained therein published in March 2017;
- No. TX 8-481-672 for Edition 67 covering 19 collective works and the articles contained therein published in April 2017;
- No. TX 8-483-753 for Edition 67 covering 22 collective works and the articles contained therein published in May 2017;
- No. TX 8-432-555 for Edition 67 covering 22 collective works and the articles contained therein published in June 2017;
- No. TX 8-481-877 for Edition 67 covering 21 collective works and the articles contained therein published in July 2017;
- No. TX 8-482-019 for Edition 67 covering 23 collective works and the articles contained therein published in August 2017;
- No. TX 8-482-009 for Edition 67 covering 21 collective works and the articles contained therein published in September 2017;
- No. TX 8-500-612 for Edition 67 covering 22 collective works and the articles contained therein published in October 2017;
- No. TX 8-532-290 for Edition 67 covering 22 collective works and the articles contained therein published in November 2017;
- No. TX 8-705-551 for Edition 67 covering 20 collective works and the articles contained therein published in December 2017;
- No. TX 8-686-686 for Edition 68 covering 22 collective works and the articles contained therein published in January 2018;
- No. TX 8-686-594 for Edition 68 covering 20 collective works and the articles contained therein published in February 2018;
- No. TX 8-686-782 for Edition 68 covering 21 collective works and the articles contained therein published in March 2018;

- No. TX 8-686-656 for Edition 68 covering 21 collective works and the articles contained therein published in April 2018;
- No. TX 8-587-433 for Edition 68 covering 22 collective works and the articles contained therein published in May 2018;
- No. TX 8-722-859 for Edition 68 covering 21 collective works and the articles contained therein published in June 2018;
- No. TX 8-686-674 for Edition 68 covering 22 collective works and the articles contained therein published in July 2018;
- No. TX 8-686-742 for Edition 68 covering 23 collective works and the articles contained therein published in August 2018;
- No. TX 8-721-864 for Edition 68 covering 20 collective works and the articles contained therein published in September 2018;
- No. TX 8-721-854 for Edition 68 covering 23 collective works and the articles contained therein published in October 2018;
- No. TX 8-721-874 for Edition 68 covering 22 collective works and the articles contained therein published in November 2018;
- No. TX 8-699-215 for Edition 68 covering 20 collective works and the articles contained therein published in December 2018;
- No. TX 8-699-210 for Edition 69 covering 22 collective works and the articles contained therein published in January 2019;
- No. TX 8-699-204 for Edition 69 covering 20 collective works and the articles contained therein published in February 2019; and
- No. TX 8-705-507 for Edition 69 covering 21 collective works and the articles contained therein published in March 2019.
- No. TX 8-715-978 for Edition 69 covering 21 collective works and the articles contained therein published in April 2019.
- No. TX 8-730-755 for Edition 69 covering 22 collective works and the articles contained therein published in May 2019.
- No. TX 8-744-046 for Edition 69 covering 20 collective works and the articles contained therein published in June 2019.
- No. TX 8-785-892 for Edition 69 covering 23 collective works and the articles contained therein published in July 2019.
- No. TX 8-823-494 for Edition 69 covering 22 collective works and the articles contained therein published in August 2019.
- No. TX 8-824-830 for Edition 69 covering 21 collective works and the articles contained therein published in September 2019.
- No. TX 8-825-266 for Edition 69 covering 23 collective works and the articles contained therein published in October 2019.
- No. TX 8-824-944 for Edition 69 covering 21 collective works and the articles contained therein published in November 2019.
- No. TX 8-833-189 for Edition 69 covering 21 collective works and the articles contained therein published in December 2019.
- No. TX 8-848-077 for Edition 70 covering 22 collective works and the articles contained therein published in January 2020.
- No. TX 8-848-071 for Edition 70 covering 20 collective works and the articles contained therein published in February 2020.

- No. TX 8-886-922 for Edition 70 covering 22 collective works and the articles contained therein published in March 2020.
- No. TX 8-897-843 for Edition 70 covering 22 collective works and the articles contained therein published in April 2020.
- No. TX 8-887-846 for Edition 70 covering 20 collective works and the articles contained therein published in May 2020.
- No. TX 8-894-538 for Edition 70 covering 22 collective works and the articles contained therein published in June 2020.
- No. TX 8-896-497 for Edition 70 covering 24 collective works and the articles contained therein published in July 2020.
- No. TX 8-903-970 for Edition 70 covering 21 collective works and the articles contained therein published in August 2020.
- No. TX 8-905-606 for Edition 70 covering 22 collective works and the articles contained therein published in September 2020.
- No. TX 8-939-364 for Edition 70 covering 22 collective works and the articles contained therein published in October 2020.
- No. TX 8-941-567 for Edition 70 covering 21 collective works and the articles contained therein published in November 2020.
- No. TX 8-954-615 for Edition 70 covering 22 collective works and the articles contained therein published in December 2020.
- No. TX 8-957-053 for Edition 71 covering 20 collective works and the articles contained therein published in January 2021.
- No. TX 8-997-434 for Edition 71 covering 20 collective works and the articles contained therein published in February 2021.
- No. TX 9-000-441 for Edition 71 covering 23 collective works and the articles contained therein published in March 2021.
- No. TX 9-027-337 for Edition 71 covering 21 collective works and the articles contained therein published in April 2021.
- No. TX 9-030-050 for Edition 71 covering 20 collective works and the articles contained therein published in May 2021.
- No. TX 9-026-735 for Edition 71 covering 22 collective works and the articles contained therein published in June 2021.
- No. TX 9-027-313 for Edition 71 covering 22 collective works and the articles contained therein published in July 2021.
- No. TX 9-035-940 for Edition 71 covering 22 collective works and the articles contained therein published in August 2021.
- No. TX 9-037-718 for Edition 71 covering 22 collective works and the articles contained therein published in September 2021.
- No. TX 9-082-545 for Edition 71 covering 21 collective works and the articles contained therein published in October 2021.
- No. TX 9-088-800 for Edition 71 covering 22 collective works and the articles contained therein published in November 2021.
- No. TX 9-083-275 for Edition 71 covering 22 collective works and the articles contained therein published in December 2021.
- No. TX 9-082-532 for Edition 72 covering 21 collective works and the articles contained therein published in January 2022.

- No. TX 9-123-609 for Edition 72 covering 23 collective works and the articles contained therein published in March 2022.
- No. TX 9-134-527 for Edition 72 covering 20 collective works and the articles contained therein published in April 2022.
- No. TX 9-191-421 for Edition 72 covering 22 collective works and the articles contained therein published in May 2022.
- No. TX 9-146-843 for Edition 72 covering 22 collective works and the articles contained therein published in June 2022.
- No. TX 9-179-937 for Edition 72 covering 21 collective works and the articles contained therein published in July 2022.
- No. TX 9-217-207 for Edition 72 covering 23 collective works and the articles contained therein published in August 2022.
- No. TX 9-216-822 for Edition 72 covering 22 collective works and the articles contained therein published in September 2022.
- No. TX 9-226-078 for Edition 72 covering 21 collective works and the articles contained therein published in October 2022.
- No. TX 9-222-861 for Edition 72 covering 22 collective works and the articles contained therein published in November 2022.
- No. TX 9-269-722 for Edition 72 covering 21 collective works and the articles contained therein published in December 2022.

D. Defendant's OD Subscription History

30. From at least as early as February 2002 through April 8, 2023, Defendant maintained a subscription to a single copy of OD and the articles therein.

31. In 2002, Defendant initially elected and did receive each issue of OD by downloading issues from Plaintiffs' website. On or about March 2022, Defendant requested that Plaintiffs instead deliver each issue OD as an attachment to an email and Plaintiffs complied. At all relevant times, the person Defendant designated to receive its copy of each issue of OD was Edith Miller.

32. Defendant renewed its subscription to a single-copy of OD for every year from 2002 through 2022.

33. Plaintiffs' subscription agreement and copyright notices forbid copying, forwarding copies, and/or distributing OD without express written permission from Plaintiffs and advise Defendant of Plaintiffs' copyright in each issue of OD.

E. Defendant's Infringement of the Registered OD Works

34. After Defendant elected to receive OD by email, an analysis of data from the email delivery system used by Plaintiffs to deliver OD to the Defendant indicated that the email delivering OD to Defendant was opened multiple times on a number of days, on a variety of different, multiple devices and IP addresses. Upon information and belief, Defendant has been systematically copying and distributing copies of OD, including the Registered OD Works, to multiple other employees of Defendant.

35. Based upon information and belief, and by way of example and without limitation, the email delivering the November 18, 2022 Registered OD Work was opened approximately 31 times on at least 5 unique devices, creating multiple copies of OD and demonstrating that Defendant distributed copies of the November 18, 2022 Registered OD Work to multiple employees of Defendant.

36. Upon information and belief, and by way of further example and without limitation, for the time period between April 1, 2022 and April 1, 2023, the emails delivering a total of 141 issues of OD published by Plaintiffs were opened 1,846 times on at least 25 unique devices by various employees of Defendant, further demonstrating that Defendant was copying and distributing the OD to multiple employees of Defendant.

37. Upon information and belief, it has been Defendant's long-standing practice to regularly, systematically, and extensively copy and distribute OD, including the Registered OD Works, and the articles contained therein via email to employees of Defendant.

38. Upon information and belief, Defendant's unlawful copying and distribution of OD began at least as early as June 2004, and has continued through April 8, 2023.

39. Upon information and belief, Defendant's email servers, servers, and computer systems are highly secure and only those individuals or entities that Defendant designates may access them.

40. Upon information and belief, Defendant's email servers, servers, and computer systems cannot be accessed by the general public or by Plaintiffs.

41. Upon information and belief, despite receiving numerous Copyright Notice and Warnings against reproduction and copying and the terms and conditions of Defendant's subscription to OD, Defendant has been making copies of the Registered OD Works, and the articles contained therein, and forwarding or otherwise distributing the same, all in violation of Plaintiffs' copyrights in the Registered OD Works.

42. Plaintiffs have never authorized Defendant to copy, transmit, or distribute the Registered OD Works.

43. Upon information and belief, Defendant actively and willfully infringed Plaintiffs' copyrights in the Registered OD Works, and concealed its regular and systematic copying and forwarding of the Registered OD Works, and the articles contained therein, from Plaintiffs.

44. By unlawfully copying and distributing the Registered OD Works, Defendant has willfully violated Plaintiffs' exclusive rights to reproduce and distribute the Registered OD Works.

45. Upon information and belief, Defendant's actions of copying and distributing the Registered OD Works constitute willful infringement of Plaintiffs' Registered OD Works.

COUNT ONE

(INFRINGEMENT OF THE REGISTERED OD WORKS)

46. Plaintiffs repeat and reallege the allegations of Paragraphs 1–44 as though fully set forth herein.

47. The Registered OD Works are highly original and contain creative expression and independent analysis. The individual works comprising the Registered OD Works are original works copyrighted under 17 U.S.C. § 102(a).

48. Plaintiffs owns all right, title, and interest in and to the Registered OD Works and are the owners of valid copyright registrations for the Registered OD Works. *See* Exhibit C.

49. As the owner of the Registered OD Works, Plaintiffs have the exclusive right to (1) reproduce the Registered OD Works and (2) distribute copies of the Registered OD Works pursuant to Section 106 of the Copyright Act, 17 U.S.C. § 106.

50. Copies of the Registered OD Works were made available to and were received by Defendant pursuant to subscription agreements and copyright notices, which prohibit copying and distributing of the Registered OD Works.

51. On information and belief, Defendant has for years willfully copied and distributed OD, including the Registered OD Works, on a consistent and systematic basis, without Plaintiffs' authorization or consent, and concealed these activities from Plaintiffs.

52. Based on the inclusion of the Copyright Notice and Warnings contained in transmittal emails, on Plaintiffs' website, in the language in the subscription agreements, and in the various warnings contained in Plaintiffs' publications, including the Registered OD Works, Defendant knew and/or was on notice that the Registered OD Works were and are protected by the copyright laws, and Defendant is therefore unable to assert a defense of innocent infringement. *See* 17 U.S.C. § 401(d).

53. Defendant's subscription agreements to OD, the Copyright Notice and Warnings, and U.S. copyright law prohibit copying and distributing of OD, including the Registered OD Works. *See* 17 U.S.C. § 501(a).

54. Upon information and belief, Defendant willfully infringed the copyrights in the Registered OD Works by acting with knowledge that its actions constituted infringement, or at least with reckless disregard of, or willful blindness to, Plaintiffs' copyrights.

55. Defendant's acts violate Plaintiffs' exclusive rights under Section 106 of the Copyright Act of 1976, 17 U.S.C. § 106, as amended, and constitute willful infringement of Plaintiffs' copyrights in the Registered OD Works. Defendant's copying, transmitting, and distribution of Plaintiffs' Registered OD Works constitute a willful and deliberate infringement of Plaintiffs' copyrights and has caused irreparable harm and damage to Plaintiffs.

56. Plaintiffs have no adequate remedy at law.

JURY DEMAND

Plaintiffs hereby demand a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendant on the foregoing claims as follows:

- (1) That Defendant, its directors, officers, agents, subsidiaries, and affiliates, and all persons acting by, through, or in concert with any of them, be permanently enjoined from infringing any copyrights of Plaintiffs in any manner, and from copying, exhibiting, transmitting, displaying, distributing, or preparing derivative works from any of the copyrighted material in any past, present, or future issue of OD, including the Registered OD Works and the articles contained therein;

- (2) That Defendant be required to pay to Plaintiffs such actual damages as they have sustained and/or statutory damages, at Plaintiffs' election, as a result of Defendant's copyright infringement of both the Registered OD Works pursuant to 17 U.S.C. § 504, which should be increased due to Defendant's willful infringement pursuant to 17 U.S.C. § 504(c)(2);
- (3) That Defendant be required to account for and disgorge to Plaintiffs all gains, profits, and advantages derived from its copyright infringement of the Registered OD Works pursuant to 17 U.S.C. § 504;
- (4) That the Court issue an Order requiring Defendant to hold harmless and indemnify Plaintiffs from any claim(s) raised by any third party who allegedly relied on any of Plaintiffs' publications it received as a result of Defendant's unauthorized use of the Plaintiffs' copyrighted materials;
- (5) That the Court enter judgment against Defendant in favor of Plaintiffs' claims, including pre-judgment and post-judgment interest, as allowed by law;
- (6) That the Court enter judgment against Defendant finding that its unlawful copying, transmitting, and distributing of the Registered OD Works and the articles contained therein was willful;
- (7) That Defendant be ordered to pay to Plaintiffs their costs in this action along with reasonable attorneys' fees pursuant to 17 U.S.C. § 505; and
- (8) That Plaintiffs be granted such other, further, and different relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED: June 20, 2023

/s/Andrew G. Deiss

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